U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
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Washington, D.C. 20536

[redacted]

PUBLIC COPY

File: WAC 99 177 53382 Office: California Service Center Date: JAN 25 2001

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(iii)

IN BEHALF OF PETITIONER: Self-represented

identification data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner engages in the manufacturing of all types of coil springs. It seeks classification of the beneficiary as a trainee for an indefinite period. The director determined that the petitioner's training program deals in generalities with no fixed schedule, objectives or means of evaluation. The director also determined that the petitioner has not demonstrated the proposed training is not available in the beneficiary's own country. The director decided that the petitioner had not demonstrated that the beneficiary will not be placed in a position in which citizens and resident workers are regularly employed. The director also decided that the petitioner did not establish that the beneficiary will not engage in productive employment. Further, the director determined that the petitioner had not demonstrated how the training will benefit the beneficiary in pursuing a career abroad. Finally, the director decided that the beneficiary already possessed substantial training and expertise in the proposed field of training.

On appeal, the petitioner states that on-the-job training is how it intends to train the beneficiary. The petitioner also states that the training will be for three months and that it will be responsible for the beneficiary's day to day living. Further, the petitioner states that the training is not available in Jordan.

Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(iii), provides classification to an alien having a residence in a foreign country which he or she has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment.

The regulation at 8 C.F.R. 214.2(h)(7) states, in pertinent part:

> (ii) *Evidence required for petition involving alien trainee*--(A) *Conditions*. The petitioner is required to demonstrate that:
>
> (1) The proposed training is not available in the alien's own country;
>
> (2) The beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed;

(3) The beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; and

(4) The training will benefit the beneficiary in pursuing a career outside the United States.

(B) *Description of training program.* Each petition for a trainee must include a statement which:

(1) Describes the type of training and supervision to be given, and the structure of the training program;

(2) Sets forth the proportion of time that will be devoted to productive employment;

(3) Shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training;

(4) Describes the career abroad for which the training will prepare the alien;

(5) Indicates the reasons why such training cannot be obtained in the alien's country and why it is necessary for the alien to be trained in the United States; and

(6) Indicates the source of any remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training.

(iii) *Restrictions on training program for alien trainee.* A training program may not be approved which:

(A) Deals in generalities with no fixed schedule, objectives, or means of evaluation;

(B) Is incompatible with the nature of the petitioner's business or enterprise;

(C) Is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training;

(D) Is in a field in which it is unlikely that the knowledge or skill will be used outside the United States;

(E) Will result in productive employment beyond that which is incidental and necessary to the training;

(F) Is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States;

(G) Does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified; or

(H) Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

The petitioner states that the training program requires three months for completion. The petitioner also states that the beneficiary will be instructed on coil spring manufacturing in the form of on-the-job training. The training will be conducted at the petitioner's production facility and will be no less than 75% of the beneficiary's time with the remaining 25% devoted to classroom type training. The training will include secondary operations such as bending hooks on springs, grinding ends, measuring spring dimensions and loads while conducting quality control, the use of measuring tools, load measuring instruments, and quality control charting. The petitioner has not shown that the beneficiary will not be engaged in productive employment beyond that necessary and incidental to the training. Further, the petitioner has not demonstrated that the beneficiary will not be placed in a position in which citizens and resident workers are regularly employed.

The petitioner states in its letter dated July 7, 1999 that this type of training and career is currently not known in Jordan and that spare parts such as springs are ordered from catalogs. Therefore, the petitioner has not demonstrated how the training will benefit the beneficiary in pursuing a career abroad. A photocopy of a picture of the front of the petitioner's business is not sufficient evidence of the petitioner's business existing in Jordan.

The petitioner stated previously that the beneficiary will be fully compensated for the time spent in training, as it is on-the-job training. The petitioner states on appeal that the compensation is only to cover the trainee's day to day living and cost of stay in the United States. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Further, the beneficiary may not be classified as a nonimmigrant trainee, in the absence of a showing that the training is not available in her own country and that the purported training is not essentially experience in repetition, review, and practical application of skills. See Matter of Frigon, 18 I&N Dec. 164 (Comm. 1981). No

evidence has been presented that such training does not exist in the beneficiary's home country.

The record indicates that the beneficiary will be working as the general manager for the petitioner's outlet in Jordan. The record does not contain the beneficiary's employment history. Absent a detailed description of the beneficiary's employment history, the beneficiary may already have substantial training and expertise in the proposed field of training.

The petitioner states that training will include the following:

1. Working knowledge of spring manufacturing.
2. Dimensioning of a sample spring.
3. The ability to factor spring loads.
4. The ability to work with the English measuring system.
5. Identifying different types of springs.
6. Basic understanding of quality control.
7. Shipping and handling.
8. Other pertinent spring manufacturing matters.

The petitioner's training program deals in generalities with no fixed schedule, objectives, or means of evaluation. The training program does not include the number of hours that will be spent in each course, who will be providing the training and the means by which the instructor(s) will be evaluating the trainee. The petitioner has not explained who will be responsible for the beneficiary's overall supervision.

The petition cannot be approved for other reasons. The petitioner has not established that the physical premises are suitable for such training. Moreover, the petitioner has not established that it has enough sufficiently trained manpower to provide the training specified.

In nonimmigrant visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.